

### **REMARKS/ARGUMENTS**

Applicants respectfully submit, contemporaneously herewith, a Request for Continued Examination pursuant to 37 C.F.R. § 1.114.

Claims 1-10, 12-18, and 30-36 are pending. Claims 1-10 and 34-36 have been withdrawn. Claims 11 and 19-29 have been cancelled. Claims 12-24 and 30-32 have been rejected. Claim 33 has been objected to.

### **Claim Rejections 35 U.S.C. § 102(b)**

Claims 12-24 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,308,357 to Lichtman ("Lichtman '357"). Applicants have cancelled Claims 19-24, rendering the Examiner's rejection of Claims 19-24 moot.

Lichtman '357 discloses a surgical instrument, shown in Fig. 7, including hollow shaft 2, solid shaft or rod 4, and jaw assembly or head 6 (Figs. 1 and 2). In order to grip a piece of tissue 80, as shown in Fig. 7, jaws 14A, 14B are positioned with tissue 80 therebetween. Then, by actuating handles 8, sleeve 2 and metal ferrule 18, which is attached thereto, are advanced in the directions of jaws 14A, 14B, to cause jaws 14A, 14B to be compressed toward one another and grip tissue 80.

Applicants respectfully submit that independent Claim 15 is not anticipated by Lichtman '357, as Lichtman '357 fails to disclose each and every limitation called for in independent Claim 15. Specifically, independent Claim 15 calls for an instrument for gripping a tibial component of a modular keel and tray assembly, the instrument including, *inter alia*, a handle, an attachment mechanism for connecting the instrument to the keel such, and a cover, the cover, with the keel component connected to the instrument, selectively positionable over a portion of the keel to shield the portion of the keel component from contamination.

In forming the rejection of independent Claim 15, the Examiner relies on jaws 14A, 14B as forming the attachment mechanism called for in independent Claim 15. Additionally, the Examiner relies on metal ferrule 18, which is secured to shaft 2 to provide additional rigidity to shaft 2, as being the cover called for in independent Claim 15. However, metal ferrule 18 of the device of Lichtman '357, is not selectively positionable over a portion of a keel component with the keel component connected to jaws 14A, 14B, as called for in

independent Claim 15. Specifically, in order to cause compression of jaws 14A, 14B and thus, connection of jaws 14A, 14B to a keel component, sleeve 2 is advanced in the direction of jaws 14A, 14B to resiliently deform jaws 14A, 14B toward one another. Thus, if the keel component is sufficiently large, jaws 14A, 14B may be incapable of being advanced close enough to one another to allow sleeve 2 and ferrule 18 to be positioned over a portion of the keel component. Alternatively, if the keel component is small enough to allow jaws 14A, 14B to be advanced close enough to one another to allow sleeve 2 and ferrule 18 to be positioned over a portion of the keel component, when shaft 2 and metal ferrule 18 were in a retracted position, jaws 14A, 14B would be biased away from one another as would fail to contact the keel component. As a result, the instrument would no longer be connected to the keel component by jaws 14A, 14B. Thus, shaft 2 and metal ferrule 18 are not selectively positionable over a portion of a keel component with the keel component connected to the instrument.

For at least the foregoing reasons, Applicants respectfully submit that Claim 15, as well as Claims 12-14 and 16-18 which depend therefrom, are not anticipated by Lichtman '357.

Claims 30-32 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,159,217 to Robie et al ("Robie '217").

Applicants respectfully submit that independent Claim 30, as well as Claims 31 and 32 which depend therefrom, are not anticipated by Robie '217. Specifically, independent Claim 30 calls for a tibial keel holder and tibial tray holder combination, the tibial keel holder being engageable with the tibial keel component of a modular tibial implant and the tibial tray holder being engageable with a tibial tray component of a modular tibial implant, the tibial keel component and tibial tray component forming a male/female junction between them, the combination including, *inter alia*, a tibial tray holder including a clamp for connecting the tibial tray holder to the tibial keel component and a tibial tray holder including an attachment mechanism for connecting the tibial tray holder to the tibial tray component.

Robie '217 discloses, as shown in Fig. 1, trochlear clamp 100, having upper arm 10 and lower arm 25. Upper arm 10 includes curved proximal end 20 and lower arm 25 includes curved proximal end 30. Arms 10, 25 are pivotable relative to one another about pin 40.

In forming the rejection, the Examiner relies on upper arm 10 as being the tibial keel holder called for in independent Claim 30. Additionally, the Examiner relies on lower arm 25 and proximal end 30 as forming the tibial tray holder and attachment mechanism for connecting the tibial tray holder to a tibial tray component, respectively, as called for in independent Claim 30. Taking upper arm 10 to be the tibial keel holder, proximal end 20 fails to form a clamp, as proximal end 20 lacks "parts brought together for holding or compressing something." See "Clamp", *Merriam-Webster On-Line Dictionary*, Merriam-Webster On-Line, July 23, 2008. Further, lower arm 25 cannot form a portion of the clamp called for independent Claim 30 as the Examiner relies on lower arm 25 as defining the tibial tray holder called for in independent Claim 30. As a result, proximal end 20 of arm 10 fails to disclose a clamp for connecting arm 10 to a tibial keel component as called for in independent Claim 30.

For at least the foregoing reasons, Applicants respectfully submit that independent Claim 30, as well as Claims 31 and 32 which depend therefrom, are not anticipated by Robie 217.

#### **Conclusion**

It is believed that the above represents a complete response to the Official Action and reconsideration is requested. Specifically, Applicants respectfully submit that the application is in condition for allowance and respectfully requests allowance thereof.

In the event Applicants have overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicants hereby petition therefor and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

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Application Serial No. 10/682101  
Amendment After Final dated March 11, 2009  
Reply to Final Office Action dated December 11, 2008

Should the Examiner have any further questions regarding any of the foregoing, he is respectfully invited to telephone the undersigned at 260-424-8000.

Respectfully submitted,



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March 11, 2009

Date